

AMENDED IN ASSEMBLY APRIL 28, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1960**

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**Introduced by Assembly Member Nava**

February 13, 2008

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An act to amend Section 8670.64 of the Government Code, and to amend Section 3236.5 of, and to add Article 4.3 (commencing with Section 3260) to Chapter 1 of Division 3 of, the Public Resources Code, relating to public resources.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1960, as amended, Nava. Public resources: oil production facilities. *facilities and oil spills.*

(1) Existing law generally regulates the drilling, operation, maintenance, and abandonment of oil and gas wells. Existing law authorizes the State Oil and Gas Supervisor or district deputy to order the plugging and abandonment of a well that has been deserted, and specifies the circumstances in which a rebuttable presumption of desertion arises. A violation of ~~existing~~ *these provisions of law* is a crime. *A violation of existing law and regulations regulating the drilling, operation, maintenance, and abandonment of oil and gas wells is punishable by a maximum civil penalty of \$5,000.*

This bill would require the Division of Oil, Gas, and Geothermal Resources to prescribe, by regulations, minimum facility maintenance standards for oil production facilities, including oil wells. The bill would require a person proposing to construct, maintain, alter, or decommission

an oil production facility to comply with these standards and obtain a permit from the division. The bill would require the division to inspect an oil production facility to ensure compliance with the standards and would authorize the division to charge a fee on the oil production facility operator in an amount sufficient to reimburse the division for the costs of implementing these requirements. The supervisor would be authorized to issue a cease and desist order to an oil production facility operator if the supervisor determines that the oil production facility is operated in violation of the prescribed standards. The division would be authorized to impose a life-of-well or life-of-facility bond requirement on an oil production facility operator ~~who~~ *that* has a history of violating regulations related to *an* oil production facility or has outstanding liabilities to the state. Because a violation of these provisions is a crime, this bill would impose a state-mandated local program. *The bill would increase the maximum civil penalty for a violation of laws and regulations related to oil and gas wells to \$25,000.*

*(2) The Lempert-Keene-Seastrand Oil Spill Prevention Act requires a person responsible for a discharge or a threatened discharge of oil in marine waters to immediately report the discharge to the Office of Emergency Services. A person who fails to notify the Office of Emergency Services, upon conviction, is subject to a fine of not less than \$2,500 or more than \$250,000 for a first violation and a fine of not less than \$5,000 or more than \$500,000 for a 2nd or subsequent violation, or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.*

*This bill would provide that a person who knowingly makes a false or misleading marine oil spill report to the Office of Emergency Services, upon conviction, is subject to a fine of not less than \$50,000 or more than \$1,000,000. By creating a new crime, this bill would impose a state-mandated local program.*

*(3) Existing law requires a person who handles hazardous materials, upon discovery, to immediately report a release or a threatened release of a hazardous substance to the Office of Emergency Services.*

*This bill would subject, upon conviction, a person who knowingly makes a false or misleading report on an oil spill in waters of the state other than marine waters to the Office of Emergency Services to a fine of not more than \$50,000. By creating a new crime, this bill would impose a state-mandated local program.*

~~(2)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 8670.64 of the Government Code is  
2     amended to read:

3     8670.64. (a) ~~Any~~A person who commits any of the following  
4     acts, shall, upon conviction, be punished by imprisonment in ~~the~~  
5     a county jail for not more than one year or by imprisonment in the  
6     state prison:

7     (1) Except as provided in Section 8670.27, knowingly fails to  
8     follow the direction or orders of the administrator in connection  
9     with an oil spill.

10    (2) Knowingly fails to notify the Coast Guard that a vessel is  
11    disabled within one hour of the disability and the vessel, while  
12    disabled, causes a discharge of oil which enters marine waters.  
13    For the purposes of this paragraph, "vessel" means a vessel, as  
14    defined in Section 21 of the Harbors and Navigation Code, of 300  
15    gross registered tons or more.

16    (3) Knowingly engages in or causes the discharge or spill of oil  
17    into marine waters, or ~~any~~ a person who reasonably should have  
18    known that he or she was engaging in or causing the discharge or  
19    spill of oil into marine waters, unless the discharge is authorized  
20    by the United States, the state, or another agency with appropriate  
21    jurisdiction.

22    (4) Knowingly fails to begin cleanup, abatement, or removal of  
23    spilled oil as required in Section 8670.25.

24    (b) The court shall also impose upon a person convicted of  
25    violating subdivision (a), a fine of not less than five thousand  
26    dollars (\$5,000) or more than five hundred thousand dollars  
27    (\$500,000) for each violation. For purposes of this subdivision,  
28    each day or partial day that a violation occurs is a separate  
29    violation.

(c) (1) ~~Any~~A person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in ~~the~~ a county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in ~~the~~ a county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(2) The acts subject to this subdivision are all of the following:

(A) ~~Fails~~*Failing* to notify the Office of Emergency Services in violation of Section 8670.25.5.

(B) ~~Continues~~*Continuing* operations for which an oil spill contingency plan is required without an oil spill contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(C) Except as provided in Section 8670.27, knowingly ~~fails~~*failing* to follow the material provisions of an applicable oil spill contingency plan.

(d) (1) *A person who knowingly makes a false or misleading marine oil spill report to the Office of Emergency Services shall, upon conviction, be punished by a fine of not less than fifty thousand dollars (\$50,000) or more than one million dollars (\$1,000,000).*

(2) *A person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000).*

SEC. 2. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) ~~Any~~A person who violates this chapter or ~~any~~ a regulation implementing this chapter is subject to a civil penalty not to exceed ~~five~~ *twenty-five* thousand dollars ~~(\$5,000)~~ (\$25,000) for each violation. Acts of God; and acts of vandalism beyond the reasonable control of the operator; shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been

committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing is not required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

(b) Notwithstanding this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well operations that are the subject of the civil penalty order ~~is~~ *be* discontinued until the violation has been remedied to the satisfaction of the supervisor; and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

**SECTION 1.**

**SEC. 3.** Article 4.3 (commencing with Section 3260) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 4.3. Regulation of Oil Production Facilities

3260. (a) The division shall, by regulation, prescribe minimum facility maintenance standards for an oil production facility, including, but not limited to, an oil well, operating in the state. The regulations shall include standards for all of the following:

- (1) Leak detection.
- (2) Corrosion prevention and testing.
- (3) Tank inspection and cleaning.
- (4) Valve and gauge maintenance, and secondary containment maintenance.
- (5) Other facility or equipment maintenance that the supervisor deems important for the proper maintenance of oil production operations in the state and that the supervisor determines are necessary to prevent damage to life, threats to health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; and damage to underground and surface waters suitable for irrigation or domestic use by the infiltration of, or the addition of, detrimental substances.

(b) A person who constructs, maintains, alters, or decommissions an oil well or oil production facility shall comply with the standards prescribed pursuant to subdivision (a).

(c) Reference to “good oilfield practice” in any provisions of law shall be to the regulations developed pursuant to subdivision (a).

3260.1. (a) A person who proposes to construct, maintain, alter, or decommission an oil production facility shall obtain and maintain a current and valid permit from the department.

(b) The supervisor shall establish a fee schedule for the permit that is sufficient and does not exceed the amount necessary to reimburse the department for the implementation of this article. The supervisor shall, on a biennial basis, revise the fee schedule to ensure the fees collected are sufficient to cover the division’s costs in implementing this article.

3260.2. Within three months of the acquisition of an oil production facility or the initial production at an oil production facility, the facility operator shall file with the division an oil spill contingency plan.

1     3260.3. The division shall inspect an oil production facility to  
2 ensure compliance with the standards prescribed pursuant to  
3 subdivision (a) of Section 3260.

4     3260.4. To the extent feasible, the division shall coordinate  
5 the permitting, inspection, and fee collection pursuant to this article  
6 with other similar regulatory activities related to the oil production  
7 facility undertaken by the division pursuant to other provisions of  
8 law.

9     3260.5. Upon a determination by the supervisor that an oil  
10 production facility is being operated in violation of the standards  
11 prescribed in subdivision (a) of Section 3260, the supervisor may  
12 issue a cease and desist order to an oil production facility operator  
13 requiring the operator to cease operation until the operator  
14 demonstrates, to the satisfaction of the supervisor, that the violation  
15 has been corrected.

16     3260.6. (a) In addition to the bonding requirements under  
17 Article 4 (commencing with Section 3200), for an oil production  
18 facility operator with a history of violating this chapter or that has  
19 outstanding liabilities to the state, the division may require a  
20 life-of-well or life-of-facility bond in an amount to ensure all of  
21 the following:

22         (1) The proper plugging and abandonment of the well by the  
23 state.

24         (2) The safe decommissioning of the oil production facility.

25         (3) The financing of spill and incident cleanup with limited  
26 costs to the state.

27     (b) Upon the failure of the oil production facility operator to  
28 properly plug and abandon an oil well, safely decommission an  
29 oil production facility, or perform the appropriate spill and incident  
30 cleanup, the supervisor may expend the bond for those purposes.

31     (c) The supervisor shall release the bond obligation upon the  
32 satisfactory decommissioning of the oil production facility.

33     3260.7. *This article does not limit a local authority's*  
34 *jurisdiction to regulate an oil production facility.*

35     ~~SEC. 2.~~

36     ~~SEC. 4.~~ No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

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